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law for a passenger to alight from a moving street car; but the question is for the jury under all the circumstances of the particular case.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 9, Carriers, §§ 1361½, 1402.]

THOMAS *v.* COMMONWEALTH.

March 14, 1907.

[56 S. E. 705.]

1. Criminal Law—Appeal—Review—Necessity of Exceptions.—A ruling of the trial court, to which no exception was taken, will not be reviewed on appeal.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 15, Criminal Law, § 2656.]

2. Same—Sufficiency of Evidence.—On appeal in a criminal case, in reviewing the denial of a motion for a new trial for insufficiency of the evidence, a new trial will not be awarded unless it appears that the evidence is plainly insufficient to warrant the finding of the jury.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 15, Criminal Law, § 3226.]

3. Rape—Evidence—Sufficiency.—On a prosecution for rape, evidence held sufficient to warrant a conviction.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 42, Rape, §§ 71-84.]

On Rehearing.

4. Criminal Law—Appeal—Review—Sufficiency of Evidence.—By the express provisions of Code 1904, § 3484, the evidence on a motion to set aside a verdict as contrary to the evidence in a criminal, as well as in a civil, case, is to be considered on appeal as on a demurrer to the evidence.

5. Rape—Appeal—Review—Sufficiency of Evidence.—Rev. Code, § 3484, provides that the evidence, on a motion to set aside a verdict as contrary to the evidence, shall be considered on appeal as on a demurrer to the evidence. Held, that the identification of defendant by prosecutrix, although uncorroborated, is not insufficient to support a conviction.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 42, Rape, §§ 83-84.]

6. Criminal Law—Trial—Objections to Evidence.—A general objection to evidence, which is in part admissible, is insufficient.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 14, Criminal Law, §§ 1633-1638.]

7. Same—Appeal—Scope of Review—Necessity of Exceptions.—An objection to evidence cannot be considered on appeal, where not preserved by a proper bill of exceptions.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 15, Criminal Law, § 2816.]

8. Same—Compelling Allowance.—Where the trial court, in a criminal case, refuses to sign a proper bill of exceptions, mandamus will lie to compel such action.

Whittle and Cardwell, JJ., dissenting in part.

LEE *v.* LAPRADE et al.

March 14, 1907.

[56 S. E. 719.]

Vendor and Purchaser—Rescission by Purchaser—Mutual Mistake.—Where, in a suit by a grantee to rescind the contract and recover the purchase money, with interest, it appeared that at the time of the conveyance the grantee believed that he was purchasing the lot which was conveyed to him by the deed, which lot was included almost entirely within the limits of a street, and that the grantor believed that he was selling an entirely different lot, which the grantee had not seen and would not have bought, the grantee was entitled to recover the amount paid by him, with interest, from the date of the writ; it not appearing that he had made any demand so as to authorize the allowance of interest from demand.

REID *v.* RHODES et al.

March 14, 1907.

[56 S. E. 722.]

1. Reformation of Instruments—Mistake in Description—Persons as to Whom Instrument May Be Reformed.—A grantee in a trust deed which calls for a tract of 100 acres, but by its description by boundaries and distances not designating so large a tract, acquires no right because of the discrepancy in acreage to have his deed reformed so as to include part of a tract held by one who purchased of the grantor in the trust deed, in good faith, for value and without notice of any right the grantee in the trust deed might have to the tract.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 42, Reformation of Instruments, § 112.]

2. Mortgages—Lien and Priority—Notice.—A trust deed to land, calling for a tract of 100 acres, but by its description by boundaries and distances not designating so large a tract, is notice of the rights of the parties to the deed, only in the tract within the description, and not in other land necessary to complete the 100 acres called for in the deed.

3. Same—Constructive Notice.—A trust deed in which the boundaries are all definite and certain except one, and that is made certain by the requirements of the deed as to how the line is to be run establishing it, is sufficient when spread on the records to give notice of the rights of the parties thereto in the land covered by it.